

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs July 28, 2008

IN RE J.C.O., C.O., S.O., & J.R.O.

**Appeal from the Juvenile Court for Wilson County
No. 4507 Barry Tatum, Judge**

No. M2008-00326-COA-R3-PT - Filed August 27, 2008

Mother appeals from a juvenile court order terminating her parental rights to her three children. Finding clear and convincing evidence to support the juvenile court's determination, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR. and RICHARD H. DINKINS, JJ., joined.

Adam Wilding Parrish, Lebanon, Tennessee, for the appellant, Christine O.

Robert E. Cooper, Jr., Attorney General and Reporter, and Elizabeth C. Driver, Assistant Attorney General, Nashville, Tennessee, for the appellee, State of Tennessee, Department of Children's Services.

Debra Dishmon, Guardian Ad Litem, Lebanon, Tennessee.

OPINION

I. BRIEF FACTUAL AND PROCEDURAL BACKGROUND

This sad case involves the parental rights of Christine O., the mother of three children, C.O., a son born in 1994, S.O., a daughter born in 1997, and J.R.O., a son born in 1998. Also living in the household when the Department of Children's Services ("DCS") removed the children was J.C.O., Christine O.'s stepson, born in 1989.¹ In September 2004, DCS received a report alleging, in part, that J.C.O. was "being chained to a bed and fed only soup and water." DCS investigated and removed all four children from the home. J.C.O., who was 15 years old at the time, weighed 49 pounds.

¹James O., the father of all four children, has not appealed the juvenile court's decision terminating his parental rights.

Both Christine O. and her husband, James O., were indicted for aggravated child abuse. In March 2006, Christine O. was convicted of attempted aggravated child neglect for abuse against J.C.O. and received a sentence of six years. On appeal, Christine O.'s sentence was reduced to three years and six months.

DCS filed a petition on July 7, 2006, to terminate the parental rights of Christine O., James O., and J.C.O.'s biological mother Sheri O. with regard to the four children. As to Christine O. and her three children, the petition alleged five grounds for termination: (1) substantial noncompliance with permanency plan; (2) abandonment through failure to support; (3) abandonment by incarcerated parent pursuant to Tenn. Code Ann. § 36-1-113(g)(1); (4) persistent conditions; and (5) sentence for child abuse pursuant to Tenn. Code Ann. § 36-1-113(g)(5). The case was tried over eight days in December 2006 and January 2007. Prior to the taking of proof, DCS made a motion for judgment on the pleadings as to Christine O. and James O. under Tenn. Code Ann. § 36-1-113(g)(5) based upon their receipt of a sentence of two or more years for severe child abuse. The court granted DCS's motion. On November 21, 2007, the juvenile court entered a detailed 33-page order terminating the parental rights of Christine O. and James O. based upon all five of the grounds alleged in the petition.²

On appeal, Christine O. asserts generally that the trial court's findings of sufficient grounds for termination are not supported by clear and convincing evidence and that the trial court's best interest determination is not supported by clear and convincing evidence.

II. STANDARDS FOR TERMINATION OF PARENTAL RIGHTS

A parent has a fundamental right to the care, custody, and control of his or her child. *Stanley v. Illinois*, 405 U.S. 645, 651 (1972); *Nash-Putnam v. McCloud*, 921 S.W.2d 170, 174 (Tenn. 1996). Thus, the state may interfere with parental rights only if there is a compelling state interest. *Nash-Putnam*, 921 S.W.2d at 174-75 (citing *Santosky v. Kramer*, 455 U.S. 745 (1982)). Terminating a person's parental rights "has the legal effect of reducing the parent to the role of a complete stranger." *In re W.B., IV.*, No. M2004-00999-COA-R3-PT, 2005 WL 1021618, *6 (Tenn. Ct. App. Apr. 29, 2005). Pursuant to Tenn. Code Ann. § 36-1-113(l)(1), "[a]n order terminating parental rights shall have the effect of severing forever all legal rights and obligations of the parent or guardian of the child against whom the order of termination is entered and of the child who is the subject of the petition to that parent or guardian."

Our termination statutes identify "those situations in which the state's interest in the welfare of a child justifies interference with a parent's constitutional rights by setting forth grounds on which termination proceedings can be brought." *In re W.B.*, 2005 WL 1021618, at *7 (citing Tenn. Code Ann. § 36-1-113(g)). To support the termination of parental rights, petitioners must prove both the existence of one of the statutory grounds for termination and that termination is in the child's best

²Sheri O. surrendered her parental rights to J.C.O. prior to the hearing.

interest. *In re D.L.B.*, 118 S.W.3d 360, 367 (Tenn. 2003); *In re Valentine*, 79 S.W.3d 539, 546 (Tenn. 2002); Tenn. Code Ann. § 36-1-113(c).

Because of the fundamental nature of the parent’s rights and the grave consequences of the termination of those rights, courts must require a higher standard of proof in deciding termination cases. *Santosky*, 455 U.S. at 769; *Matter of M.W.A., Jr.*, 980 S.W.2d 620, 622 (Tenn. Ct. App. 1998). Thus, both the grounds for termination and the best interest inquiry must be established by clear and convincing evidence. Tenn. Code Ann. § 36-1-113(c)(1); *In re Valentine*, 79 S.W.3d at 546. Clear and convincing evidence “establishes that the truth of the facts asserted is highly probable . . . and eliminates any serious or substantial doubt about the correctness of the conclusions drawn from the evidence.” *In re M.J.B.*, 140 S.W.3d 643, 653 (Tenn. Ct. App. 2004). Such evidence “produces in a fact-finder’s mind a firm belief or conviction regarding the truth of the facts sought to be established.” *Id.* at 653.

In light of the heightened standard of proof in these cases, a reviewing court must adapt the customary standard of review set forth by Tenn. R. App. P. 13(d). *In re M.J.B.*, 140 S.W.3d at 654. As to the trial court’s findings of fact, our review is de novo with a presumption of correctness unless the evidence preponderates otherwise, in accordance with Tenn. R. App. P. 13(d). *Id.* We must then determine whether the facts, as found by the trial court or as supported by the preponderance of the evidence, clearly and convincingly establish the elements necessary to terminate parental rights. *Id.*

III. ANALYSIS

Grounds for Termination

_____ In arguing that the trial court erred in finding clear and convincing evidence of grounds for termination, Christine O. asserts that “there is no evidence in the record to support the proposition that [Christine O.] is unfit or that substantial harm to these children [Christine O.’s three children] will result if parental rights are not terminated.” This court has previously held that the statutory bases for termination constitute “parental conduct and situations that render a person unfit or pose a risk of substantial harm to the welfare of a child.” *In re Audrey S.*, 182 S.W.3d 838, 881 (Tenn. Ct. App. 2005).³ Christine O. does not specifically address or even mention any of the five grounds of termination found to exist by the juvenile court.⁴ DCS argues that clear and convincing evidence supports the trial court’s termination of Christine O.’s parental rights pursuant to Tenn. Code Ann. § 36-1-113(g)(5). Because of the strength of this ground and Christine O.’s failure to contest the other four grounds, DCS did not make any argument regarding the other grounds in its brief. In light

³Moreover, contrary to Christine O.’s argument, there is evidence of substantial psychological harm to her three children from observing, and in some instances being required to participate in, the abuse of J.C.O. This is discussed in the best interest analysis below.

⁴The only specific ground cited by Christine O. in her brief is Tenn. Code Ann. § 36-1-113(g)(4), which addresses a previous finding of severe child abuse. Tenn. Code Ann. § 36-1-113(g)(4) is not one of the statutory grounds alleged in DCS’s petition.

of the arguments made by the parties, we decline to address any ground other than Tenn. Code Ann. § 36-1-113(g)(5).

Tenn. Code Ann. § 36-1-113(g)(5) sets out the following ground for the termination of parental rights:

The parent or guardian has been sentenced to more than two (2) years' imprisonment for conduct against the child who is the subject of the petition, or for conduct against any sibling or half-sibling of the child or any other child residing temporarily or permanently in the home of such parent or guardian, that has been found under any prior order of a court or that is found by the court hearing the petition to be severe child abuse, as defined in § 37-1-102(b)(21). Unless otherwise stated, for purposes of this subdivision (g)(5), "sentenced" shall not be construed to mean that the parent or guardian must have actually served more than two (2) years in confinement, but shall only be construed to mean that the court had imposed a sentence of two (2) or more years upon the parent or guardian.⁵

The evidence does not preponderate against the following pertinent findings of fact made by the juvenile court:

In March of 2006, [James O. and Christine O.] were criminally convicted for the abuse inflicted against [J.C.O.], and each of them were found guilty of attempted aggravated child neglect. . . .

On May 16, 2006, the criminal Court imposed upon each parent a sentence of six (6) years imprisonment as a result of their convictions for attempted aggravated child neglect. . . .

⁵Tenn. Code Ann. § 37-1-102(b)(21) defines severe child abuse as follows:

(A) The knowing exposure of a child to or the knowing failure to protect a child from abuse or neglect that is likely to cause great bodily harm or death and the knowing use of force on a child that is likely to cause great bodily harm or death;

(B) Specific brutality, abuse or neglect towards a child that in the opinion of qualified experts has caused or will reasonably be expected to produce severe psychosis, severe neurotic disorder, severe depression, severe developmental delay or retardation, or severe impairment of the child's ability to function adequately in the child's environment, and the knowing failure to protect the child from such conduct.

(C) The commission of any act towards the child prohibited by §§ 39-13-502--39-13-504, 39-13-522, 39-15-302, and 39-17-1005 or the knowing failure to protect the child from the commission of any such act towards the child; or

(D) Knowingly allowing a child to be present within a structure where the act of creating methamphetamine . . . is occurring.

The conduct of [James O. and Christine O.] which served as the basis for their criminal convictions has been previously found by this Court to be severe child abuse as defined by T.C.A. Section 37-1-102(b)(21).

[C.O., S.O., and J.R.O.] are half-siblings to [J.C.O.], and resided in the home with [James O. and Christine O.] at the time the severe abuse as to [J.C.O.] occurred.

An adjudicatory hearing was conducted in this matter, and the court declared [J.C.O.] to be a severely abused child, as alleged by [DCS], and as defined in T.C.A. Section 37-1-102(b)(21). In addition, the Court declared [C.O., S.O., and J.R.O.] were dependent and neglected children.

As part of the Adjudication Order entered on May 6, 2005, the Court entered a finding that [J.C.O.] was a severely abused child within the meaning of the law and as defined in T.C.A. Section 37-1-102(b)(21) while in the care and control of [James O. and Christine O.]. The finding was based upon the following:

[Christine O. and James O.] kept [J.C.O.] chained to their bed; [Christine O. and James O.] allowed [J.C.O.] to become nutritionally malnourished by feeding him a diet of soup and water; and [Christine O.] physically abused [J.C.O.] by hitting and kicking him leaving bruising.

The Court's finding of dependency and neglect as to [C.O., S.O., and J.R.O.] was based upon the incarceration of and the criminal charges of Aggravated Child Abuse which was pending against [James O. and Christine O.] at the time of the adjudication. The Court further found that these children may have, or may in the future, suffer negative psychological effects due to their exposure to and awareness of the abuse committed upon [J.C.O.] by [James O. and Christine O.].

Both parents admitted in their respective Answer to [DCS's] termination petition that they were convicted of attempted aggravated child abuse against [J.C.O.], and that both parents were subsequently sentenced to serve six (6) years in prison for their respective conditions. Both parents further admitted that this Court has previously found the acts of neglect described above to constitute severe abuse as defined by T.C.A. Section 37-1-102(b)(21), pursuant to the Adjudication Order entered on May 6, 2005.

Based upon these detailed findings of facts, none of which is specifically refuted by Christine O. on appeal, clear and convincing evidence supports the juvenile court's determination that the elements of Tenn. Code Ann. § 36-1-113(g)(5) were met.

Best Interest

DCS was also required to prove by clear and convincing evidence that termination “is in the best interest of the child[ren].” Tenn. Code Ann. § 36-1-113(c)(2); *In re Valentine*, 79 S.W.3d at 546. Tenn. Code Ann. § 36-1-113(i) lists factors to be considered by the court in making its best interest determination:

- (1) Whether the parent or guardian has made such an adjustment of circumstance, conduct, or conditions as to make it safe and in the child’s best interest to be in the home of the parent or guardian;
- (2) Whether the parent or guardian has failed to effect a lasting adjustment after reasonable efforts by available social services agencies for such duration of time that lasting adjustment does not reasonably appear possible;
- (3) Whether the parent or guardian has maintained regular visitation or other contact with the child;
- (4) Whether a meaningful relationship has otherwise been established between the parent or guardian and the child;
- (5) The effect a change of caretakers and physical environment is likely to have on the child’s emotional, psychological and medical condition;
- (6) Whether the parent or guardian, or other person residing with the parent or guardian, has shown brutality, physical, sexual, emotional or psychological abuse, or neglect toward the child, or another child or adult in the family or household;
- (7) Whether the physical environment of the parent’s or guardian’s home is healthy and safe, whether there is criminal activity in the home, or whether there is such use of alcohol or controlled substances as may render the parent or guardian consistently unable to care for the child in a safe and stable manner;
- (8) Whether the parent’s or guardian’s mental and/or emotional status would be detrimental to the child or prevent the parent or guardian from effectively providing safe and stable care and supervision for the child; or
- (9) Whether the parent or guardian has paid child support consistent with the child support guidelines promulgated by the department pursuant to § 36-5-101.

Ascertaining whether termination is in a child’s best interest is necessarily a fact-intensive inquiry. *In re Giorgianna H.*, 205 S.W.3d 508, 523 (Tenn. Ct. App. 2006). Moreover, the best interest analysis “does not call for a rote examination of each of Tenn. Code Ann. § 36-1-113(i)’s nine

factors and then a determination of whether the sum of the factors tips in favor of or against the parent.” *In re Audrey S.*, 182 S.W.3d at 878. Rather, “[t]he relevancy and weight to be given each factor depends on the unique facts of each case.” *Id.*

The order of the juvenile court contains some 12 pages of findings regarding its best interest determination. While we will not repeat all of the juvenile court’s findings here, a review of those findings indicates that the juvenile court carefully considered all of the relevant factors in this case. Some of the evidence cited by the juvenile court in its decision is summarized below.

Dr. Erin Paige Fowler, a psychologist who evaluated Christine O.’s three children after their removal from the home, diagnosed S.O. with post-traumatic stress disorder and as being the victim of physical abuse. S.O. exhibited a preoccupation with feelings of aggression and fears of being harmed. The juvenile court stated: “[S.O.] often feels threatened, and she has specific fears of being harmed by her parents.”⁶ Dr. Fowler diagnosed C.O. with post-traumatic stress disorder and as being the victim of physical abuse. C.O. “disclosed specific memories of being required to participate in the abuse of [J.C.O.],” which Dr. Fowler considered a form of abuse of C.O. The juvenile court pointed out that “Dr. Fowler concluded that [C.O.] has significant fear of his parents, especially being afraid that they would hunt him down and hurt him.” Dr. Fowler diagnosed the youngest child, J.R.O., with an adjustment disorder with mixed disturbance of emotions and conduct and as a victim of neglect; she also noted the need for further evaluation for possible physical and sexual abuse, post-traumatic stress disorder, and attention deficit/hyperactivity disorder (ADHD). Dr. Fowler recommended continued counseling for all three children and “stressed the importance of the children having continuity in their placement with the least amount of disruptions.” Summarizing Dr. Fowler’s opinion, the court stated:

Without hesitation, Dr. Fowler concluded that parents’ relationship with the children have [sic] been harmful. [C.O. and S.O.] have both expressed fear of their parents. Dr. Fowler weighed the circumstances surrounding the children’s removal from the home and the information provided to her that the children were required to participate in the abuse of their older brother. Dr. Fowler opined that resuming the parental relationship and returning the children to the parents would be harmful to the children and could possibly cause them more psychological distress.

Psychologist Dr. Trey Monroe began counseling all four children, including J.C.O., in October 2004 and continued to do so through the time of the hearing. He diagnosed C.O. with a depressive disorder, single episode, moderate. C.O.’s psychological and emotional problems sometimes manifested themselves as conduct problems, such as stealing. Based upon Dr. Monroe’s testimony, the court stated:

[C.O.] does not feel safe with his parents. He is terrified of them and does not want to be hurt any more, but again, these are his parents and he loves them. [C.O.] would

⁶ All subsequent quotations in this summary of the evidence are from the juvenile court’s order.

complain about the noise made by [J.C.O.] at home, stating that he would moan and scream for food. [C.O.] has issue with guilt in that he was forced to adulterate [J.C.O.'s] food by putting coffee grains in it. He was told if he did not behave, his parents would chain him also.

Dr. Monroe diagnosed S.O. with post-traumatic stress disorder. Of the three children, she exhibited the most overt anxiety symptoms. She was “terrified of being reunited with her parents” and had frequent night terrors. S.O.’s “safety needs are very high due to the things she has witnessed, and she is under an enormous amount of pressure to avoid things that make her remember what she witnessed and what happened to her in the home.” Dr. Monroe diagnosed J.R.O. with ADHD and adjustment disorder with mixed disturbance of conduct and mood. The youngest of the three children, J.R.O. was more “shut down about his experiences” and was the least fearful of his parents. He tended to be withdrawn and exhibited agitation.

Dr. Monroe was “very worried about the effect any reunification will have on the children.” The court summarized Dr. Monroe’s concerns about [C.O.]:

Dr. Monroe concluded that [C.O.] is terrified of going back to his parents. He is worried that he will be punished and treated as they did [J.C.O.]. Dr. Monroe opined that reunification would cause [C.O.] to emotionally shut down again. . . . Dr. Monroe is very worried about the effect reunification would have on [C.O.’s] depression issue, fearing that he would develop a true sense of helplessness. He is very worried about getting hurt. His nightmares would return and his anxiety would substantially increase.

David Frensley, a psychological examiner, evaluated Christine O.⁷ and recommended interventions, including psychotherapy and anger management. Mr. Frensley “expressed grave concerns about how helpful these interventions could be to the parents, given the severity of the situation that led to the removal.” He urged caution “about the risk of allowing the parents to care for the children again.” Mr. Frensley also identified Christine O.’s low level of intellectual functioning as an obstacle to achieving the changes necessary to allow reunification.⁸

The court’s findings also including the following:

The Parents have shown little interest in the welfare of the children. They have not made any change in their conduct or circumstances that would make it safe for the child to be released to the custody of these parents. Each parent continues to

⁷In his report, Mr. Frensley summarized Christine O.’s misfortunes as a child. Because of her parents’ drug problems, she was in various foster homes from the age of 12. Christine O. also reported physical abuse by her father. At age 14, Christine O. was emancipated; she began working and cohabited with a man who physically abused her, causing the miscarriage of her first child.

⁸Psychological testing showed Christine O. to have an IQ in the extremely low to borderline range.

be incarcerated. They have not completed the requirements of the permanency plan or the recommendations of their psychological evaluations to address the issues which resulted in the children being committed to custody.

It is in the best interest of the children for parental rights to be terminated as to both parents based upon continuity of placement. The children are doing well in their respective foster placements. They are each placed with relatives and enjoy sibling visitation.⁹ They have developed strong bonds and attachments to their respective caregivers, and each of the children appear to be happy. Changing caregivers in this stage of their lives after having remained in custody for twenty-seven (27) months will have a detrimental effect on the children.

It is in the child's best interest for termination to be granted as to both parents because they have failed to contribute to the support of the children.

Christine O. argues that taking the children away from her permanently would have a negative impact upon them. In support of this argument, Christine O. cites the juvenile court's statement at the hearing that "[t]he kids love her . . . they feel a connection and have a bond with mom." She describes her role as the children's primary caregiver prior to their removal from the home. Christine O. also emphasizes Dr. Monroe's testimony that C.O.'s depression was caused by the loss of his parents and of his normal life. This testimony must, however, be viewed in context. Dr. Monroe testified at length as to the effect of termination and stated: "[L]osing your parents is tough, even if it's the only way to keep you alive. It's tough, it hurts, and it has negative consequences. . . . [O]verall I believe the good [resulting from the termination of parental rights in this case] outweighs the bad."

While acknowledging that these three children love their mother and feel grief over the loss of that relationship, the court made the determination that it is in their best interest to terminate Christine O.'s parental rights. In light of the trial court's detailed findings, against which the evidence does not preponderate, there is clear and convincing evidence to support the court's determination that termination was in the children's best interest.

IV. CONCLUSION

We affirm the judgment of the trial court. Costs of appeal are assessed against the appellant, for which execution may issue if necessary.

ANDY D. BENNETT, JUDGE

⁹Christine O.'s three children lived with the same family, and J.C.O. lived with another family.